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National Freedom of Information Officer
United States Environmental Protection Agency
Office of Environmental Information
Records, FOIA, and Privacy Branch
1200 Pennsylvania Avenue NW (2822T)
Washington, D.C. 20460

Regional Freedom of Information Officer
U.S. EPA, Region 6
1445 Ross Avenue (6MD-OE)
Dallas, TX 75202-2733

**Re: Freedom of Information Act Request
Calcasieu Estuary, Louisiana**

To Whom It May Concern:

This is a request for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Specifically, this request concerns United States Environmental Protection Agency (EPA) records related to the Calcasieu Estuary in Louisiana, and certain Areas of Concern designated by EPA within the Calcasieu Estuary.

For purposes of the following requests, these terms shall be defined as follows:

- (a) the term “document” means all written or recorded material of any kind or character in your possession, custody or subject to your control, or within your knowledge, including, without limitation, documents, statements, letters, correspondence, papers, telegrams, memoranda, notes, records, reports, studies, interoffice communications, calendar and diary entries, microfilm, bulletins, e-mail, electronic mail, circulars, pamphlets, messages, invoices, maps, charts, tabulations, summaries or abstracts, tape recordings, work sheets, any notes or writings pertaining to any meetings, oral or telephone communication, surveys, graphs, statistics, tables, any computer print-outs, photographs, rules, regulations, opinions, orders, directives, interpretations, procedures, guidelines, manuals, and all other documentary material (including material transmitted and/or stored electronically), including non-identical copies (whether different from the original because of any alterations, notes, comments or other material contained thereon or attached thereto or otherwise, and whether a draft or final version);
- (b) the term “agency records” is intended to have the broadest and most inclusive meaning possible under the FOIA. As such, the term “agency records” includes, but is not limited to, all documents, agreements, contracts, reports, analyses, memoranda, emails, including email on personal accounts, transcripts, minutes, notes, bulletins, worksheets, schedules, calendars, drawings, photographs, renderings, figures, diaries, workpapers, presentations, data compilations, spreadsheets, databases, and communications created or obtained by

EPA and under EPA's control at the time of this request. *See U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-46 (1989).

Specifically, the term "agency records" includes, but is not limited to, all agency records in electronic, hard copy, or any other tangible or graphic format, however produced or reproduced, including audio or video recordings. "Communications" means any and all recorded communications within, to, or from EPA (and to, from, or among EPA's consultants and contractors working on the Site), including letters, electronic forms and submissions, emails, and text messages, including any attachment or enclosure included with the communication. "Communications" includes those communications generated by or contained on both government-issued and personal email accounts, computers, tablets, phones, and other electronic communication devices, whether or not sent or received under pseudonym or alias. This request is for agency records of EPA as a whole, and it is therefore not limited to agency records of EPA Region 6.

- (c) the term "related to" and its cognates means to make a statement about, set forth, refer to, discuss, describe, reflect, identify, deal with, consist of, explain, comprise, or in any way pertain in whole or in part, directly or indirectly, to the subject;
- (d) the term "EPA" refers to the United States Environmental Protection Agency;
- (e) the term "Calcasieu Estuary" refers to the area located in the southwestern corner of Louisiana, predominately in Township 10 South, Range 9 West, and as used in the context of EPA's August 29, 2003 Final Calcasieu Estuary Remedial Investigation Report;
- (f) the term "AOC" shall mean Area of Concern;
- (g) the term "Bayou d'Inde AOC" refers to the area in the northern portion of the Calcasieu Estuary, west of the City of Lake Charles, Louisiana, with headwaters that originate in the western part of Sulphur, Louisiana, and flow primarily east-southeast before emptying in to the ship channel southwest of Coon Island, and as used in the context of EPA's August 29, 2003 Final Calcasieu Estuary Remedial Investigation Report;
- (h) the term "Bayou Verdine AOC" refers to the area located between the City of Westlake and the community of Mossile, and north-northwest of Lake Charles in Calcasieu Parish, Louisiana, and as used in the context of EPA's August 29, 2003 Final Calcasieu Estuary Remedial Investigation Report;
- (i) the term "Upper Calcasieu AOC" refers to that region of Calcasieu Estuary that extends from the saltwater barrier on the Calcasieu River (north of Lake Charles), through Lake Charles, west to Clooney Island Loop, and southwest to Coon Island Loop, and as used in the context of EPA's August 29, 2003 Final Calcasieu Estuary Remedial Investigation Report;
- (j) the term "Lower Calcasieu AOC" refers to the area comprising the portion of Calcasieu Estuary from the I-210 Bridge, just south of Coon Island Loop, to the outlet of Moss Lake, not including the dredged portion of the ship channel, and as used in the context of EPA's August 29, 2003 Final Calcasieu Estuary Remedial Investigation Report;
- (k) the term "Direct Costs" shall mean expenses directly traced to a particular activity, such as site investigation and/or cleanup action, including but not limited to expenses incurred

by EPA and its contractors for time spent on the activity; travel to and from the site, other contractor costs at the site, and costs of equipment used at the site;

- (l) the term “Contractors’ Annual Allocation Costs” shall mean site-related costs allocated by government contractors to a specific site in a given year;
- (m) the term “Indirect Costs” shall mean EPA’s expenses for managing the agency, including but not limited to administration, personnel, guidance development, office, utility, and supply costs, and allocated by EPA among specific sites in a given year;
- (n) the terms “Remove,” “Removal Action,” “Remedy,” “Remedial Action,” “Respond,” “Response,” or “Release” shall have the meanings by which they are defined in Section 101 of CERCLA, 42 USC § 9601, Definitions;
- (a) the term “RI/FS” shall mean Remedial Investigation/Feasibility Study.

Specifically, we request copies of the following agency records:

1. All agency records and documents related to response costs EPA claims to have incurred in connection with any removal or remedial action at each of the AOCs listed below, including without limitation documents reflecting direct costs, indirect costs, inter-agency costs, State Cooperative Agreement costs, contractor costs, lab costs, annual allocation costs, other expenditures, and any other categories of response costs EPA claims to have incurred at the AOCs. Categories of documents to be produced shall include but not be limited to: all summaries of interim costs paid by or on behalf of EPA; all narrative cost summaries for the Site certified by the EPA Financial Management Office; all itemized cost summaries for the Site certified by the EPA Financial Management Office of cost paid by or on behalf of EPA; all Regional payroll Costs (Region 6); all Headquarters payroll costs; all contracts and contract costs; all monthly technical progress reports submitted by each contractor by each contractor for each billing period; all ATSDR costs; all Environmental Service Assistance Team Costs; all Superfund Tech Assessment and Response Team costs, and; a current Scorpios summary of all costs claimed to have been incurred by EPA at the each of the following AOCs with linked backup.
 - a. Bayou d’Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
2. All agency records or documents prepared by or on behalf of each payee that EPA relied on as support for payment of any of the response costs EPA claims to have incurred in connection with any removal or remedial action at each of the AOCs listed below:
 - a. Bayou d’Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
3. All agency records and documents referring or relating to any State Cooperative Agreements between EPA and the State of Louisiana that apply to the AOCs listed

below, including each State Cooperative Agreements and revision or amendment of such Agreement, and all EPA communications to and from the State of Louisiana (and any of its Agencies) that refer to response actions (removal or remedial) at any of the AOCs listed below.

- a. Bayou d'Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
4. All agency records and documents referring or relating to any division of responsibility between EPA and the State of Louisiana (and any of its Agencies) for investigation, removal actions, remedial action or any other response action activities , at any of the AOCs listed below.
 - a. Bayou d'Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
5. All agency records and documents related to sums received by EPA in payment or reimbursement of any of the response costs EPA claims to have incurred in connection with any removal or remedial action at each of the following AOCs, including without limitation all documents and Agency records that identity the person or entity that made any such payment or reimbursement and the amount each paid:
 - a. Bayou d'Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
6. All agency records and documents referring or relating to the manner in which the indirect cost rate was calculated annually for response costs EPA claims to have incurred at each of the following AOCs:
 - a. Bayou d'Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
7. All agency records and documents referring or relating to the manner in which the annual allocation rate for each contractor (and any other person or entity to which EPA claims annual allocation rates apply) was calculated each year for response costs EPA claims to have incurred at each of the following AOCs:
 - a. Bayou d'Inde AOC

- b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
8. All documents relating to removal or remedial actions by EPA, and response costs EPA claims to have incurred, for any such removal or remedial action, for any AOC in the Calcasieu Estuary other than the following AOCs:
- a. Bayou d'Inde AOC
 - b. Bayou Verdine AOC
 - c. Upper Calcasieu AOC
 - d. Lower Calcasieu AOC
9. All agency records and documents reflecting, referring, or relating to all unpermitted leaks spills, or releases of hazardous substances from the Firestone Polymers, LLC facility located in Lake Charles, Louisiana (whether operated by Firestone Polymers, LLC or any predecessor that owned or operated the facility), including without limitation all documents referring to any such leaks spills or releases that were received from Firestone Polymers, LLC, operated by Firestone Polymers, LLC, any governmental entity, or any other person or entity.
10. All agency records and documents reflecting, referring, or relating to the groundwater or surface water impacts of business operations at the Firestone Polymers, LLC facility located in Lake Charles, Louisiana (whether operated by Firestone Polymers, LLC or any predecessor that owned or operated the facility).

If a given agency record is responsive to more than one individual request or is found in more than one location, EPA need not provide multiple copies or duplicates of the same record.

We will accept responsibility for the reasonable and necessary costs associated with EPA's response to this request, including reasonable standard charges for document searching and duplication, up to a maximum amount of \$2,500.00. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(III); 40 C.F.R. § 2.102(d). If EPA determines that the reasonable and necessary costs of responding to this request will exceed \$2,500.00, please contact us as soon as possible to discuss payment. If for some reason copies of certain agency records cannot be made or provided, we request an opportunity to view and inspect those agency records.

If it is EPA's position that any of the agency records requested in this letter are exempt from disclosure under the FOIA, EPA must nonetheless provide any reasonably segregable portions of those agency records after deleting or redacting the purportedly exempt portions. 5 U.S.C. § 552(b); *Pebble Ltd. P'ship v. U.S. Envtl. Prot. Agency*, No. 3:14-cv-0199-HRH, 2016 WL 128088, at *3 (D. Alaska Jan. 16, 2016); *see also* Attorney General Eric L. Holder, Memorandum for Heads of Executive Departments and Agencies (Holder Memorandum), 74 Fed. Reg. 49892-01 (Sept. 29, 2009), 74 Fed. Reg. 51878-02 (Oct. 8, 2009) ("Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information.").

If EPA withholds all or any portion of a record requested in this letter, EPA must indicate in the response the amount of information that is withheld, deleted, or redacted, as well as the basis for

each withholding, deletion, or redaction. 5 U.S.C. § 552(b); 40 C.F.R. § 2.104(h). Please provide an index or catalogue of responsive agency records that EPA intends to withhold in full or in part, as well as an individual explanation for each full or partial withholding, consistent with the holding in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

If EPA chooses to withhold segregable portions of any agency record that is responsive to this request, please use blackout redactions rather than deletions or whiteout redactions. If agency records that would otherwise be responsive to this request have been destroyed or are no longer in EPA's control, please identify each record, the date of destruction, and the person(s) who destroyed the record.

The President has observed that “[a] democracy requires accountability, and accountability requires transparency.” Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act (Presidential Memorandum), 74 Fed. Reg. 4683 (Jan. 21, 2009). In light of those principles, the President has instructed all federal agencies, including EPA, to “adopt a presumption in favor of disclosure” when making decisions involving FOIA. *Id.* That instruction is consistent with the underlying legislative purpose of the FOIA, a statute whose basic purpose is to instill “a general policy of full agency disclosure” *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360 (1976), quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965).

The President has further instructed federal agencies to “act promptly and in a spirit of cooperation” when responding to FOIA requests, “recognizing that such agencies are servants of the public.” Presidential Memorandum, 74 Fed. Reg. at 4,683. Similarly, the FOIA guidelines issued by then-Attorney General Eric L. Holder in 2009 “strongly encourage agencies to make discretionary releases of information,” and they explain that “an agency should not withhold information simply because it may do so legally.” Holder Memorandum, 74 Fed. Reg. at 51878-02.

We trust that EPA will take seriously its obligations under the FOIA, the Administrative Procedures Act, and the above-referenced Executive directives for implementing these statutes when responding to this request for agency records. We invite you to contact us as soon as possible to arrange for delivery of the agency records requested. In the meantime, we appreciate your prompt attention to this request, and look forward to your response.

Yours truly,



Bruce White

cc:
Louis Blatt